

SECTION 1. *Article 3.3 (commencing with Section 14124.39) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:*

ARTICLE 3.3. Protect Patients Now Act of 2024.

Section 14124.39. Title.

This article shall be known and may be cited as the Protect Patients Now Act of 2024.

Section 14124.40. Findings and declarations.

(a) In 1992, the federal government established a program giving safety net health care providers access to discounted prescription drugs. The intent of the law was for safety net health care providers to use the discounted drugs to treat patients who are “medically uninsured, on marginal incomes and have no other sources to turn to for preventive and primary care services” and to “reach[] more eligible patients and provide[] more comprehensive services” to “low-income and most vulnerable patients.” (H.R. Rep. No. 102-384 (Part 2), at 12 (1992)(Conf. Rep.).) The program was NOT intended to be used by safety net health care providers to accumulate massive fortunes running into the hundreds of millions of dollars or more.

(b) Unfortunately, some safety net health care providers have manipulated the program to receive enormous markups on the discounted prescription drugs they receive and then stick taxpayers with the added cost. Instead of using this massive windfall to help patients, the worst offenders have used their fortunes to purchase luxury coastal condominiums, wasted hundreds of millions of dollars on failed political campaigns, put elected politicians on their payrolls, and acquired low-income multifamily housing complexes that are operated as slums. Abusing net revenues generated through the discount prescription drug program in this manner does not result in better health care for low-income patients. Instead, it cheats low-income patients out of the care they deserve and scams taxpayers who end up footing the bill.

(c) Governor Newsom has already ended this type of prescription drug scamming in the Medi-Cal program through Executive Order N-01-19, which requires the Department of Health Care Services to transition Medi-Cal pharmacy services away from arrangements that are susceptible to price scams. Known as the Medi-Cal Rx program, it achieves cost-savings for prescription drug purchases made by the State, standardizes the pharmacy benefit statewide for

all Medi-Cal patients, increases overall access, and eliminates the ability of prescription drug price manipulators to game the system through Medi-Cal. However, other vulnerabilities in taxpayer-funded drug programs that price manipulators still exploit have not yet been addressed.

(d) California needs to make the cost-savings achieved through the Medi-Cal Rx program permanent. Furthermore, additional reforms are necessary to protect taxpayer dollars and help the neediest patients by ensuring that prescription drug price manipulators are required to end other scams in order to continue operating in our State.

Section 14124.41. Statement of intent.

In enacting this article, the purpose and intent of the People of the State of California is to do all of the following:

(a) To permanently authorize the Medi-Cal Rx program so that its expanded patient access and cost-savings can be continued in perpetuity.

(b) To protect patients and taxpayers by putting an end to other prescription drug pricing scams that are still being perpetrated in our State through the discount prescription drug program.

(c) To impose strict accountability on prescription drug price manipulators by requiring them to spend at least ninety-eight percent (98%) of their net revenues generated in this State through the discount prescription drug program on direct patient care.

(d) To ensure that health care providers that have a track record of scamming the discount prescription drug program refocus on providing direct patient care or lose their state-provided privileges and benefits including suspension and revocation of licenses, loss of state and local grant funding, and elimination of California tax-exempt status.

Section 14124.42. Permanent authorization for the Medi-Cal Rx program.

The Department of Health Care Services is authorized to provide and administer Medi-Cal pharmacy services under a single statewide fee-for-service delivery system.

Section 14124.43. Limitation on pharmacy sales agreements involving prescription drug price manipulators.

(a) On and after January 1, 2025, a prescription drug price manipulator shall not enter into, or participate in, a pharmacy sales agreement that applies to, operates in, or intends or proposes to operate in or apply to, this State unless the prescription drug price manipulator is in compliance with Section 14124.44.

(b) Any pharmacy sales agreement which involves a prescription drug price manipulator not in compliance with Section 14124.44 is, as of January 1, 2025, contrary to public policy and is void and unenforceable to the extent that the pharmacy sales agreement applies to, operates in, or intends or proposes to operate in or apply to, this State.

Section 14124.44. Patient protection requirements imposed on prescription drug price manipulators.

Notwithstanding any other provision of law, on and after January 1, 2025, a prescription drug price manipulator shall only be eligible for tax-exempt status in this State or to be licensed to operate as a pharmacy, a health care service plan, or a clinic in this State if it complies with all of the following requirements:

(a) In the prior calendar year, the prescription drug price manipulator spent at least ninety-eight percent (98%) of the net revenues it generated in California from participation in the discount prescription drug program on direct patient care.

(b) In the prior calendar year, the prescription drug price manipulator was not engaged in any unprofessional conduct, dishonest dealing, or conduct inimical to the public health, welfare, or safety of the People of the State of California.

Section 14124.45. Oversight of prescription drug price manipulators.

(a)(1) In order to determine compliance with Section 14124.44, on and after January 1, 2025:

(A) A prescription drug price manipulator that holds tax-exempt status in this State shall annually submit to the Attorney General a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(B) A prescription drug price manipulator that holds a pharmacy license in this State shall annually submit to the Board of Pharmacy a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(C) A prescription drug price manipulator that holds a health care service plan license in this State shall annually submit to the Department of Managed Health Care a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(D) A prescription drug price manipulator that holds a clinic license in this State shall annually submit to the Department of Public Health a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(2) The People of California hereby find and declare that, similar to the need for out-of-state information under Chapter 17 of Part 11 of Division 2 of the Revenue and Taxation Code, it is necessary for prescription drug price manipulators to provide information on both California statewide and nationwide gross and net revenues in order to ensure proper allocation of in-state and out-of-state revenues.

(b) In addition to any other authority granted by this article, the Attorney General, the Board of Pharmacy, the Department of Managed Health Care, or the Department of Public Health may do either of the following:

(1) Standardize the necessary contents of the detailed accounting(s) required to be submitted pursuant to this section.

(2) Request from a prescription drug price manipulator any other information deemed necessary or convenient to determine compliance with the requirements set forth in Section 14124.44.

(c) All information submitted pursuant to this section shall be submitted under penalty of perjury.

(d)(1) All financial information submitted to the Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health pertaining to either of the

following shall be treated as confidential and sensitive business information exempt from public disclosure:

(A) Specific prices or amounts paid by, or charged to, a prescription drug price manipulator for specific prescription drugs acquired by the prescription drug price manipulator through the discount prescription drug program.

(B) Specific prices or amounts charged by, or paid to, a prescription drug price manipulator for specific prescription drugs it obtained through the discount prescription drug program.

(2)(A) Total aggregated gross and net revenues generated by a prescription drug price manipulator through the discount prescription drug program are not covered by this subdivision so long as the figures do not reveal the specific information described in subparagraphs (A) or (B) of paragraph (1).

(B) After removing or anonymizing the specific information described in subparagraphs (A) and (B) of paragraph (1), the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall make total aggregated statewide and nationwide gross and net revenues figures publicly available upon request.

(e)(1) The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall cooperatively establish the deadline each year for a prescription drug price manipulator to submit the information required by this section.

(2) For calendar year 2025, the deadline shall not be later than December 31, 2025.

(3) A prescription drug price manipulator that fails to submit required information by the deadline established pursuant to this subdivision shall be deemed to be out of compliance with the requirements of Section 14124.44 for the applicable calendar year, according to the procedures set forth in subdivision (b) of Section 14124.46.

(f) The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health may each impose a fee on a prescription drug price manipulator for the costs associated with concluding whether the prescription drug price manipulator was in compliance with the requirements of Section 14124.44 during the prior calendar year. The charges shall not exceed the reasonable regulatory costs to the respective agency incident to performing the investigations, inspections, and audits required by this article, including any administrative enforcement and adjudication thereof.

(g)(1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health may implement this article by means of bulletins, notices, or other similar instructions, without taking further regulatory action.

(2) Actions taken pursuant to an inter-agency agreement entered into pursuant to subdivision (c) of section 14124.46 shall be covered by paragraph (1).

Section 14124.46. Conclusions regarding compliance.

(a)(1) Within 60 calendar days of the deadline established pursuant to subdivision (e) of Section 14124.45, the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall each separately issue an independent written conclusion regarding whether or not the prescription drug price manipulator is in compliance with the requirements of Section 14124.44. Failure to reach a conclusion within 60 calendar days shall not excuse noncompliance with Section 14124.44.

(2) The Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health shall only be required to issue an independent written conclusion pursuant to this subdivision if the prescription drug price manipulator was required to submit information to the relevant official, board, or department pursuant to subdivision (a) of Section 14124.45.

(b)(1) If, within the 60-calendar day period set forth in paragraph (1) of subdivision (a), the information submitted by a prescription drug price manipulator is found to be incomplete or insufficient by the Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health for issuance of a written conclusion required by this section, then the relevant official, board, or department shall issue to the prescription drug price manipulator a written notice to correct. The notice to correct shall contain a description of the additional information required.

(2) The prescription drug price manipulator shall have 10 calendar days from the date of the notice to correct to provide complete and/or sufficient information. If the prescription drug price manipulator fails to remedy the incompleteness and/or insufficiency within 10 calendar days, then the prescription drug price manipulator shall be deemed to be out of compliance with

the requirements of Section 14124.44 for the applicable calendar year and the relevant official, board, or department shall issue a written conclusion to that effect immediately upon the expiration of the 10-calendar day period.

(c) The Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health may, either collectively or separately, enter into an inter-agency agreement with the California State Auditor's Office for assistance in reaching a conclusion about a prescription drug price manipulator's compliance with the requirements of Section 14124.44. Costs incurred pursuant to an inter-agency agreement under this subdivision may be recovered pursuant to subdivision (f) of Section 14124.45.

(d)(1) If the Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health concludes a prescription drug price manipulator is not in compliance with the requirements of Section 14124.44, then a written notice of noncompliance shall be provided to the prescription drug price manipulator notifying it of that conclusion. The written notice of noncompliance shall provide instructions on requesting a hearing pursuant to subdivision (e).

(2) If a hearing is not requested pursuant to subdivision (e), then a conclusion issued pursuant to this section shall become a final determination.

(e)(1)(A) A prescription drug price manipulator may request a hearing in response to a written notice of noncompliance issued pursuant to paragraph (1) of subdivision (d).

(B) The request shall be submitted in writing and must be made within 30 calendar days of the date of the written notice of noncompliance.

(2)(A) Except as otherwise provided in this article, hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health may consolidate hearings on written notices of noncompliance pertaining to the same prescription drug price manipulator for the same calendar year and may mutually appoint a single hearing officer therefor. The hearing may be conducted by a hearing officer appointed by an official, board, or department that issued a written notice of noncompliance.

(C) The prescription drug price manipulator may, but need not, be represented by counsel at any of the stages of the proceedings.

(3)(A) If judicial review is not sought pursuant to subdivision (f), then the decision of the hearing officer shall become a final determination.

(B) If the hearing officer's decision is that the prescription drug price manipulator is not in compliance with the requirements of Section 14124.44, then any exemption from California state taxation and any licenses described in subdivision (a) of Section 14124.45 held by the prescription drug price manipulator shall be immediately suspended. If judicial review is thereafter sought pursuant to subdivision (f), the state tax exemption and license(s) shall remain suspended pending judicial review pursuant to subdivision (f).

(f)(1) Any party aggrieved by the decision of the hearing officer may seek review pursuant to Section 1094.5 of the Code of Civil Procedure within 30 calendar days of issuance of the hearing officer's decision.

(2) If review is sought pursuant to Section 1094.5 of the Code of Civil Procedure, the final determination shall be based upon the outcome of that review.

Section 14124.47. Final determinations.

Notwithstanding any other provision of law, if a prescription drug price manipulator is finally determined pursuant to the procedures set forth in this article to have violated the requirements of Section 14124.44, then all of the following shall apply:

(a) Any and all California pharmacy licenses, health care service plan licenses, or clinic licenses held by the prescription drug price manipulator shall be permanently revoked.

(b) The prescription drug price manipulator shall be prohibited from applying for, or obtaining or possessing, a California pharmacy license, health care service plan license, or clinic license for a period of 10 years.

(c) Any person serving as an owner, chief executive officer, chief financial officer, chief administrative officer, chief operating officer, president, or any other similar position exercising significant influence or control over the prescription drug price manipulator at the time the violation of Section 14124.44 occurred shall be prohibited from serving as an owner, officer, director, or employee of a California licensed pharmacy, health care service plan, or clinic for a period of 10 years.

(d) The prescription drug price manipulator shall lose, and no longer be eligible for, tax-exempt status in the State of California, including under Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code, and shall instead be subject to the Revenue and Taxation Code and other state laws as a taxable organization. The prescription drug price manipulator shall be prohibited from reapplying for, or again being granted, tax-exempt status in this State for a period of 10 years.

(e) The prescription drug price manipulator shall be ineligible to receive any new or renewed California state or local grants or contracts for a period of 10 years.

Section 14124.48. Definitions.

For purposes of this article, as used in both the singular and plural form, the following definitions shall apply:

(a) “Clinic” means an entity operating as one or more of the clinics described in Section 1204 of the Health and Safety Code.

(b) “Direct patient care” means the provision of medical services, dental services, pharmaceutical services, or behavioral health services directly administered to individual patients being treated for, or suspected of having, medical or behavioral health conditions. Direct patient care includes preventive care that is directly administered to patients. Further, in order to qualify as “direct patient care,” the services must be health care services that are regularly provided by other health care providers in the community or nonprofit community-based organizations that are also receiving reimbursements or payments from the Medi-Cal, Medicaid, or Medicare programs.

(c) “Discount prescription drug program” means the program established by the Veterans Health Care Act of 1992, P.L. 102-585 § 602, within section 340B of the Public Health Service Act (§ 340B; 42 U.S.C § 256b) that is administered by the Office of Pharmacy Affairs in the Health Resources and Services Administration within the United States Department of Health and Human Services.

(d) “Enforcement agency” means any department of a state, county, or city agency within California that has the authority to inspect a multifamily dwelling and enforce health, safety, or building codes including, but not limited to, a building department or building division,

a housing department, a housing and community investment department, a fire department or fire district, and a health department.

(e) "Entity" means a natural person, corporation, or other legal or corporate organization of any kind, whether non-profit or for-profit, and includes any parent, subsidiary, or affiliate of the entity.

(f) "Health care service plan" means an entity operating as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(g) "Medi-Cal Rx Program" means the program initially established pursuant to Paragraph (1) of Executive Order N-01-19 and permanently authorized by Section 14124.42.

(h) "Multifamily dwelling" means any structure located in this State designed or used for human habitation or occupancy that has been divided into two or more independent living quarters.

(i) "Owner-operator of highly dangerous properties" means an entity, including any parent, subsidiary, or affiliate of that entity, that, either currently or previously, owns, operates, or is the responsible party for one or more multifamily dwellings that meet or met the following conditions during the time of the entity's ownership, operation, or responsibility:

(1) One or more of the multifamily dwellings was inspected on one or more occasions by an enforcement agency or officer thereof.

(2) The enforcement agencies or officers issued one or more notices or inspection reports identifying violations affecting the health and safety of occupants of the multifamily dwelling(s).

(3) Cumulatively across all of the multifamily dwellings, the notices and/or inspection reports described in paragraph (2) identified a combined total of at least five hundred (500) violations which were categorized in violation severity level "high."

(j) "Pharmacy" means an entity operating pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(k)(1) "Pharmacy sales agreement" means any agreement involving a pharmacy and another entity that purchases, authorizes, or obtains prescription drugs through the discount prescription drug program where both of the following conditions exist:

(A) The pharmacy dispenses drugs negotiated by the other entity through or pursuant to the discount prescription drug program.

(B) The price charged by the pharmacy for the drugs described in subparagraph (A), excluding dispensing fees, exceeds the purchase price negotiated and/or paid by the other entity pursuant to or through the discount prescription drug program.

(2) A pharmacy sales agreement can exist between unrelated entities, or between related entities that are parents, subsidiaries, or affiliates of one another or otherwise under common ownership or control.

(1) "Prescription drug price manipulator" means an entity, including any parent, subsidiary, or affiliate of that entity, that individually or collectively with one or more of its parents, subsidiaries, or affiliates meets all of the following requirements:

(1) The entity purchases, negotiates, authorizes, or obtains prescription drugs through the discount prescription drug program.

(2) During any ten calendar year period of its existence, the entity spent more than one hundred million dollars (\$100,000,000) on purposes that do not qualify as direct patient care.

(3) The entity currently is, or has previously been, an owner-operator of highly dangerous properties.

(4) The entity meets at least one of the following conditions:

(A) The entity currently has, or previously had, one or more licenses to operate as a health care service plan.

(B) The entity currently contracts, or has previously contracted, with the Department of Health Care Services as a primary care case management organization pursuant to Article 2.9 (commencing with Section 14088) of Chapter 7 of Part 3 of Division 9.

(C) The entity currently contracts, or has previously contracted, with the federal Centers for Medicare and Medicaid Services to provide services in the Medicare Program as a Medicare special needs plan.

(D) The entity currently has, or previously had, one or more licenses to operate as a pharmacy.

(E) The entity currently has, or previously had, one or more licenses to operate as a clinic.

14124.49. Unprofessional conduct, dishonest dealing, and conduct inimical to public health, welfare, or safety.

(a) In addition to any other conduct, standard, or requirement described in Article 7 (commencing with Section 1386) of Chapter 2.2 of Division 2 of the Health and Safety Code or any other statute or regulation, it shall constitute dishonest dealing for a health care service plan that qualifies as a prescription drug price manipulator to fail to submit timely, accurate information required or requested pursuant to Section 14124.45.

(b) In addition to any other conduct, standard, or requirement described in Article 19 (commencing with Section 4300) of Chapter 9 of Division 2 of the Business and Professions Code, Section 1762 of Title 16 of the California Code of Regulations, or any other statute or regulation, it shall constitute unprofessional conduct for a pharmacy that qualifies as a prescription drug price manipulator to fail to submit timely, accurate information required or requested pursuant to Section 14124.45.

(c) In addition to any other conduct, standard, or requirement described Article 5 (commencing with Section 1240) of Chapter 1 of Division 2 of the Health and Safety Code or any other statute or regulation, it shall constitute conduct inimical to the public health, welfare, or safety of the people of the State of California for a clinic that qualifies as a prescription drug price manipulator to fail to submit timely, accurate information required or requested pursuant to Section 14124.45.

Section 14124.50. California state and local grants and contracts eligibility.

(a)(1) The People of California hereby find and declare that their state and local tax dollars should not be awarded to prescription drug price manipulators that violate the discount prescription drug program's intent to treat patients who are "medically uninsured, on marginal incomes and have no other sources to turn to for preventive and primary care services" and to "reach[] more eligible patients and provide[] more comprehensive services" to "low-income and most vulnerable patients."

(2) The People of California further find and declare that protecting their state and local tax dollars in this manner is a matter of statewide concern.

(b) Therefore, in addition to the requirements of subdivision (e) of Section 14124.47, a prescription drug price manipulator shall only be eligible to receive any new or renewed

California state or local grants or contracts if, in the prior calendar year, the prescription drug price manipulator spent at least ninety-eight percent (98%) of the net revenues it generated nationwide from participation in the discount prescription drug program on direct patient care.

Section 14124.51. Public input.

The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall invite, and provide a process for submission of, public comments and information relating to entities that qualify as a prescription drug price manipulator and/or an owner-operator of highly dangerous properties. Information that can be submitted pursuant to this section includes, but is not limited to, records of expenditures and written notices or inspection reports identifying violations affecting the health and safety of occupants at multifamily dwelling(s).

Section 14124.52. Effective date and severability.

(a) This article shall take effect on the next January 1 following its adoption by the voters.

(b) The provisions of this article are severable. If any portion, section, subdivision, paragraph, subparagraph, clause, subclause, sentence, phrase, word, or application of this article is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this article. The People of the State of California hereby declare that they would have adopted this article and each and every portion, section, subdivision, paragraph, subparagraph, clause, subclause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any part of this article or application thereof would be subsequently declared invalid.

(c) To the extent a court of competent jurisdiction determines it is legally impossible to comply with any date or deadline set forth in this article during the first calendar year after this article takes effect, the People of the State of California hereby declare their intent for this article to be implemented and applied at the earliest possible date consistent with state and federal law.

SECTION 2. *Conflicting Measures.*

(a) In the event that this initiative measure and another initiative measure or measures dealing with pharmacy sales agreements or prescription drug price manipulators, as defined in this initiative, shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(b) Notwithstanding subdivision (a), the People hereby find and declare that this initiative measure does *not* conflict with the Protect Access to Healthcare Act of 2024 (Atty. Gen. # 23-0024) or any other initiative measure that provides additional or extended funding for the Medi-Cal program.

SECTION 3. *Liberal Construction.*

This Act shall be liberally construed to give effect to its intent and purposes, which are expressed in Sections 14124.40 and 14124.41.

SECTION 4. *Legal Defense.*

The purpose of this section is to ensure that the people's precious right of initiative cannot be improperly annulled by state politicians who refuse to defend the will of the voters. Therefore, if this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge which attempts to limit the scope or application of this Act in any way, or alleges this Act violates any state or federal law in whole or in part, and both the Governor and Attorney General refuse to defend this Act to the fullest extent possible on behalf of the State of California, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 (commencing with Section 12500) of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act to the fullest extent possible on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act to the fullest extent possible. The written affirmation shall be made publicly available upon request.

(c) In order to support the defense of this Act in instances where the Governor and Attorney General fail to do so despite the will of the voters, a continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California to the fullest extent possible.